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No. 3

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# THE CLASSICAL WEEKLY

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A passage which has given many earnest students a deal of trouble is Cicero Cat. 1.5:

Si te iam, Catilina, comprehendi, si interfici iussero, credo, erit verendum mihi, ne non potius hoc omnes boni serius a me quam quisquam crudelius factum esse dicat.

The first point to note is *credo*. As every one knows, the parenthetical *credo* repeatedly marks irony. As every one knows again, irony gives to a passage, in the last analysis, a meaning exactly the opposite of that which the passage bears on its face. Now, manifestly, in this passage, irony is in order first at *erit verendum mihi*. These words thus mean, in reality, 'I shall have no reason to fear'.

Next, to understand the passage, it is necessary for the moment to disregard *quisquam*; of this word something will be said below. It is advisable also, in our attempts at interpretation, to act, for a moment, as if our sentence ran, *non erit verendum mihi ne non hoc omnes boni serius factum esse dicant*. What would this mean? Plainly, 'I shall have no reason to fear that all loyal citizens will not say of my act, "Too late"'. If one were to say, 'I have no fear (I shall have no reason to fear) that he will not come', every one would understand the meaning to be 'I am certain that he will come'. So *non erit mihi verendum ne non hoc omnes serius factum esse dicant* means, clearly, 'I am absolutely certain that every one will say of my act, "Too late"'.

So far so good. But we have two other things to consider—the balance of the sentence as a whole, and, in particular, *quisquam* and the singular verb *dicat*. Of course the singular verb was made possible by the introduction of *quisquam*. That introduction is, strictly speaking, illogical, and incorrect. Given the affirmative rendering set forth above, 'I am absolutely certain that all loyal citizens will say "Too late"', it is easy enough to modify this sentence by making it run, 'I am absolutely certain that all loyal citizens will say "Too late" rather than "Too cruel"'. Put affirmatively, without irony, this might run in Latin as follows: Pro certo scio fore ut potius hoc omnes boni serius a me quam crudelius factum esse dicant, or Non dubito quin potius hoc omnes boni serius a me quam crudelius factum esse dicant. In neither case is there room for *quisquam*. How, then, did this word find its way into the text? To claim with positiveness that one can penetrate the recesses of Cicero's

mind, and determine surely the exact process by which a sentence like this took final form is of course rash. Still, one can see a way by which *quisquam* might have presented itself to Cicero as a legitimate element of his sentence. If we reduce what is logically the main thought of this sentence to its simplest terms, we find that it amounts to this: 'Every one will say "Too late": no one (not any one) will say "Too cruel"'. That *quisquam* is the proper substantive word for 'any' in sentences which are negative, whether that negative character is made plain by a negative word or is left to the reader's interpretative analysis, is a point too familiar to require discussion. In this sentence an outright negative would, of course, have been impossible, but the negative thought latent in Cicero's mind finds expression, we may say, in the introduction of *quisquam*. Once in the sentence *quisquam* works further havoc, for the modern reader at least, by affecting the number of *dicat*.

In translating we must disregard *quisquam* entirely. We may then render, with irony in English as in Latin, 'I shall have to fear, I trow, that all loyal citizens will not say that such act of mine was too late rather than too cruel', or, seriously, with the irony removed, 'I shall have no jot or tittle of reason to fear that all loyal citizens will not describe my act as too late rather than as too cruel', or, lastly, 'I am sure that all loyal citizens will say that, in doing this, I was too late rather than too cruel'.

In the same way I would explain a famous crux in Horace, Sermones 1.3.120-121. These verses form part of a long passage (117-123):

adsit  
regula, peccatis quae poenas irroget aequas,  
ne scutica dignum horribili sectere flagello,  
nam ut ferula caedas meritum maiora subire  
verbera non vereor, cum dicas esse pares res  
furta latrocinii, et magnis parva mineris  
falce recisurum simili te, si tibi regnum  
permittant homines.

For many verses Horace has been preaching against the Stoic doctrine that all sins are equal, and so deserving of exactly the same punishment. In 97-117 he has set forth the Epicurean theory of the origin of justice. 'Justice and law are man-made things. As man made them, so he may change them at will. The moment he discovers that any given punishment is too severe, he has a right instantly to change the punishment, to make it less severe. *Adsit* . . .

*aequas* clearly means, then, 'Let there be some punishment that shall in each case fit (but shall do no more than fit) the crime'. Now, manifestly, two possibilities must, logically, be dealt with—(1) the possibility that the punishment administered will be too great, and (2) the possibility that it will be too small. With these two possibilities in mind Horace begins, rightly enough: 'Let there be a rule which shall assign to errors (*peccatis* is a purposed understatement, an intentionally soft word for wrong doing) penalties that are fitting'.

Then, in 119, he sets forth, fully and fairly, one of the two possibilities, 'in order that, if a man deserves (only) the strap, you shall not cut him to pieces with the awful knout'. Up to this point all is clear and correct. But now the difficulty comes. Logically, Horace should have written something like *nec ferula caedas meritum maiora subire verbera*, 'and in order that you shall not cut (merely) with the ferule one who has deserved to undergo severer lashings'. That is to say, Horace should, logically, have set forth in terms the other possibility—that punishments may be too gentle, and that therefore against this extreme too there should be legislation.

But here, as so often, the logic is lost in emotion. Horace deliberately waives the expression, in set terms, of the other possibility. Of this deliberate waiving of the other possibility he serves notice by *nam*, which, here at least, marks ellipsis: '(the other possibility I do not set forth in set terms) for', etc.

If we take *non vereor*, 121, literally and unemotionally—that is, to speak plainly, as entirely without irony, then we have the crux which all editors and scholars have found in this passage, for then, on the basis of the well known distinction between *ut* and *ne* in clauses dependent on verbs of fearing (a distinction which Horace unmistakably recognizes in *Sermones* 1.4. 31-32 and 2.1.60-62), we shall have this meaning, 'I do not fear that you will not cut with the ferule one who has deserved severer punishment', which would mean, 'for I am certain that you will be too gentle'. This utterly ruins logic. Addressed to a Stoic, it is absurd. What, then, is the remedy? If one were following this discussion in English, and, after reading what we have in *Adit. . . flagello*, 117-119, were to find Horace saying to a Stoic—upholder of the doctrine that all sins must be punished alike—'for I am sure you will be too gentle in your punishments', he would instantly, unless he were wholly without a sense of humor or logic, decide that, since Horace was sane all through the discussion to this point, he must himself interpret verse 120 in such wise as to leave Horace still sane, and he would see that there is an easy way of doing this—to take *non vereor*, 121, as ironical. Taken as ironical, *non vereor* = *pro certo vereor*, 'I do most certainly fear', and instantly *ut* is seen to be correct, to be just what Horace, who knew Latin, should have said: 'I do most certainly fear that you will not be too gentle'.

We see, now, that the point of the *nam*-clause is this: 'I emphasize, perhaps overemphasize the warning against severity in punishments, because I fear that your tendency will never be toward gentleness'.

That Horace took a grave risk in not serving warning somehow, as Cicero did by his *credo* in *Cat.* 1.5, that he was speaking ironically a study of the commentators, particularly of Mr. Housman's proposal (see the note in Mr. Gow's edition) will make clear. And yet, if he were alive to-day, he might shake his head sadly and ask whether after all Cicero fared much better, though he tried by his parenthetical *credo*, to the limit of his superb linguistic resources, to save all readers from misunderstanding.

C. K.

## LEGISLATION AGAINST POLITICAL CLUBS DURING THE REPUBLIC

(Continued from page 14)

There were two fundamental differences between sodalicia and other forms of organized unions. The first was their aim, which was almost exclusively political, if indeed it was not quite so. They banded together to elect their candidate to office. The vital objection to this consisted in the fact that they did not restrict their activity to the legitimate methods of obtaining votes, but were guilty of acts of violence, and of infringements of the provisions of the laws relating to bribery. If their candidate was elected, and was prosecuted for bribery, they undertook his defense as a further obligation. The second difference consisted in the elaborate organization of the sodalicia, in contrast with the partial organization of the sodalitates, and with the loose organization of the collegia.

Cicero maintains that, in order to convict a man on a crimen sodalicium, it was first of all necessary to prove the existence of a thorough organization. The essential feature of the organization was that it was constructed on a tribal basis. The members of a tribe (*tribules*) who allied themselves with the club formed a unit, and the operation of the sodalicia was through the tribe. In elections each tribe voted separately, and the majority vote of each of the thirty-five tribes counted as one vote for or against a candidate for office. Consequently the important thing for a candidate was to secure a majority of the votes in each of eighteen tribes. To this end a candidate conducted his canvass in each of the tribes<sup>26</sup>. When he wished to extend his operations beyond the mere request for votes, he would sometimes give feasts to the voters. This was done either by making a selection among the voters generally, or by entertaining them tribe by tribe<sup>27</sup>. In the same manner gladiatorial contests

<sup>26</sup>Suetonius, *Caes.* 41: comitia cum populo partitus est, ut . . . pronuntiarentur pro parte altera quos ipse edidisset. Et edebat per libellos circum tribus missos scriptura brevi: Caesar dictator illi tribui: Commendo vobis illum et illum, etc.; Ausonius, *Grat. Act.*, p. 704 (Tall.): tribus non circumivi, centurias non adulavi, vocatis classibus non intremui; Mamertinus Paneg. Iul. 16: <candidatis> tributim omnes atque etiam singuli salutandi. Compare Cicero, *Planc.* 24; *Mil.* 25.

<sup>27</sup>Q. Cicero *De Pet. Cons.* 11: convivia facito et abs te et ab amicis (= sodalibus) tuis concelebrantur et passim et tributim.



were offered as inducements, but it is doubtful whether these were conducted by the difficult method of entertaining the tribes separately; rather tickets were given to members of tribes together<sup>38</sup>. So, when attempts at bribery were made, the system of distributing money by tribes was adopted<sup>39</sup>. But, if a candidate desired to form a political machine, he could instantly see that it would be of no service to enroll in a union the members of different tribes. He would work in each tribe by itself, and he evidently set about it in a most methodical way. Either the candidate or his representative first made a list of all the voters in the tribe (*conscriptio tribulium*). Then the representative would act as agent for his superior in fashioning the organization. The person acting in this capacity was called *magister collegii*. The *magister* would next divide the membership of the tribe into smaller sections (*decuratio tribulium*) for the sake of more effective operations.

Provided these operations were to be carried to the extent of bribery of the voters, and that was the chief purpose of effecting an organization, the next move was to place before the voters the promise of a certain amount of money if they would give their votes to the candidate who was responsible for the formation of the club<sup>40</sup>. This act was known as *pronuntiatio pecuniae*. The actual promising of money was not done by the candidate himself, nor by the *magister collegii*, but by their subordinates, who received the name of *sequestres*. The word *sequestres* is an old word, signifying the followers or the escort of a candidate as he conducted his canvass. In connection with *sodalicia*, or bribery, the *sequestres* were the persons with whom the money of the candidate was deposited for its later distribution<sup>41</sup>. In the formation of *sodalicia* they seem to have had the task of so perfecting the organization that control over each voter would be possible, and of keeping account of the progress of the canvassing. To this end they subdivided the persons composing the tribe, this time into the sheep and the goats, according as the citizen was ready to vote as he was bidden or not. This stage of the organizing was called *discriptio populi*, and was the final test of the strength of the club. The *sequestres* were probably friends of the candidate, who were anxious to secure his help in their own ambitions, and consequently were ready to perform this service in advance<sup>42</sup>. Lastly, to those who voted in accordance with instructions was given the money

that had been promised (*divisio pecuniae*); this part of the work was probably done by *divisores*, as the name implies. The business of a *divisor* was regarded as a mean and servile task<sup>43</sup>, unfit for the *sequestres* or those of higher rank in the organization. But the sources do not make it quite clear just who these men were. There are certain indications that they may have been the more humble friends of the candidates, used for this mean purpose<sup>44</sup>. On the other hand there are statements that seem to show rather decisively that they were chosen by the voters themselves as their representatives to receive the money, and conduct negotiations, or that they assumed this rôle voluntarily as go-betweens in their own interest, in order to get some advantage personally out of their work<sup>45</sup>. In this case it would become necessary to assume that the *divisores* were ready to guarantee the vote of the tribe, and probably were the persons who actually perfected the organization. Thus the sole relation of the candidate to the whole enterprise would be that of paying for the votes of the tribe, provided the *divisores* could fulfil their agreement.

For the distribution of the money a place was selected, apparently the house of the sequester, at which the *divisores* of the different tribes received the men of their own tribes, and distributed the money among them<sup>46</sup>. But this seems too open to be practicable, that is, it would be likely to cause the sequester to fall under suspicion; so it cannot be considered probable that such a system was universal, or perhaps even the usual one. But in the year 61, *Afranius*, a candidate for office, and *M. Piso Calpurnianus*, a consul, carried out this distribution in their houses so openly that the Senate took notice of it, and two proposals were made with the object of preventing such obvious infractions of the law, but they failed to pass the Senate<sup>47</sup>.

In order to meet this growing and most pernicious system of bringing influence to bear upon elections and legislation, the two consuls of the year 55, *Pompey* and *Crassus*, evolved a measure that made the formation of organizations of this kind a criminal offense. Both consuls were anxious to increase the penalties for corruption at elections, especially in cases where payments of money were involved. *Dio Cassius* points out that they had secured their own election mainly by the use of force, but that they none the less

<sup>38</sup>*Cicero*, *Mur.* 67, 72, 73; *In Vat.* 37, where *Mommsen* (*Coll.* 49) takes *vulgo* to mean "omnibus qui vellent tribulibus", but that assumes an unnatural and unreasonable method for candidates to pursue.

<sup>39</sup>*Cicero*, *Att.* 1.16.7; *Ad Q. Fr.* 2.15; *Suetonius*, *Caes.* 19.

<sup>40</sup>*Cicero*, *Att.* 1.16.7 (on the *Rogatio Aufidia* of 61, which was not passed, 1.18.4); *Ad Q. Fr.* 2.15; *Suetonius*, *Caes.* 19. Compare *Cicero*, *Planc.* 45.

<sup>41</sup>*Pseudo-Asconius*, *In Verr. Act. Pr.* 36: *sequestres sunt apud quos pecunia deponitur*. Compare *Cluent.* 72.

<sup>42</sup>*Cicero*, *Att.* 1.16.2; *Verr.* 2.108. The account given above of the functions of the *sequestres* cannot be absolutely verified in all details, but seems the most probable relation between the various persons involved. An alternative is suggested in the text.

<sup>43</sup>*Cicero*, *Verr. Act. Pr.* 22, 23, 25; *Att.* 1.18.6; *De Orat.* 2.237; *Suetonius*, *Aug.* 3.

<sup>44</sup>*Q. Cicero*, *De Pet. Cons.* 19; *Cicero*, *Planc.* 38, 43, 45, 48; *Dio Cassius*, 36.21.

<sup>45</sup>*Cicero*, *Att.* 1.18.6: *tribulis enim tuus est et Sextus pater eius nummos vobis dividere solebat*; *Verr. Act. Pr.* 22: *divisores omnium tribuum noctu ad istum vocatos*; *De Harus. Resp.* 42: *ut . . . idemque vir clemens divisores omnium tribuum domi ipse suae crudelissima morte mactaret*; *Appian*, *B. C.* 3.23; *Suetonius*, *Aug.* 101; *Asconius in Milon. Arg.* The distinction drawn above between the *sequestres* and the *divisores* is in part taken from *Weismann*, pages 1, 16, 20, although his conclusions are a little more positive than the evidence seems to warrant. He is particularly emphatic in the argument that *divisores* were to be found in every tribe, willing to dispose of the tribal vote.

<sup>46</sup>*Cicero*, *De Harus. Resp.* 42; *Att.* 4.16.4.

<sup>47</sup>*Cicero*, *Att.* 1.16.7; *Planc.* 55; less accurately *Plutarch*, *Pomp.* 44, *Cat. Min.* 30.

viewed with great disfavor the gaining of office through organization or corruption<sup>48</sup>. So Pompey busied himself with the consideration of measures of a general character against bribery, and of others looking to a reform in the system of selecting juries, while Crassus proposed and carried a law which was concerned specifically with the abolition of the organizations called sodalicia. Cicero says that this law was due to the initiative of Crassus, and not to that of both consuls, and he mentions it by name, calling it a law of Crassus<sup>49</sup>. Its terms are best known through the speech of Cicero delivered in behalf of Plancius, who was prosecuted under it in the following year.

It is obvious that there is a close connection between the crimes of sodalicium and ambitus, but some scholars have argued that the relation between sodalicium and vis is still closer<sup>50</sup>. Dio says that Pompey and Crassus were interested in an effort to put an end to bribery, and his statement seems to imply that the consuls viewed bribery as a means for securing an election as a more serious offense than the use of force. After their own experience, it is argued, they could hardly have had the effrontery to enact legislation declaring that their own method of acquiring office was criminal. Therefore, the crime of sodalicium, against which they directed their enactment, must have been only one form of bribery, or ambitus<sup>51</sup>. But this argument loses its entire force in view of the fact that, while Pompey and Crassus were candidates for the consulship, they assisted both by bribery and violence the candidacy of Vatinius for the praetorship in opposition to Cato<sup>52</sup>. Thus they were as deeply involved in one offense as in the other, and in either case condemned themselves.

Several passages in the oration for Plancius have been regarded as furnishing ample evidence that the sodalicia existed solely for the purpose of wholesale bribery, and that against this the law of Crassus was directed. This, it is said, is the only way in which the peculiar method of selecting the jury can be explained<sup>53</sup>. But the passage upon which special stress is laid, while specifying bribery as the offense then under consideration, puts the selection of jurors merely on the ground that the operations of one accused of the crime would be best known to the members of those tribes in which the defendant had been most active. But it is not legitimate to draw the conclusion from this passage that bribery was the only form of corruption that was

included in the provisions of the law. A second passage in the oration seems to indicate that sodalicium was but one phase of the crime of bribery<sup>54</sup>. Cicero claims that the prosecutor, Laterensis, in his speech before the court, found himself unable to substantiate his charge of sodalicium, and turned to a general discussion of bribery. But this seems very inconclusive, for one could equally well argue that Cicero accuses Laterensis of charging Plancius with a different crime from that on which the case rested. In fact, it does not seem that this passage is of value at all in a settlement of the question. The third passage cited in support of the close relation of sodalicium and ambitus is that in which Cicero names Crassus as the author of a law on the subject of ambitus, and the supposition must be that this is the law under which Plancius was being prosecuted<sup>55</sup>. This is in reality the strongest evidence that can be found, for, unless one admits that sodalicium was but a peculiar form of ambitus, one is forced to say that Cicero here uses the word ambitus loosely, and not in its special technical sense. Two passages in the speech for Caelius are cited in the same manner as evidence for the connection<sup>56</sup>. And it is true that Cicero does combine them in the most direct language used in any one of the passages bearing on the connection between the two, but it is impossible to make them serve as evidence in this case, for the reason that the speech for Caelius was delivered in 56, one year before the enactment of the law of Crassus, and that means one year before a distinction between the two crimes was made.

Again, it is argued<sup>57</sup> that the words used by Dio Cassius in describing the law<sup>58</sup>, and particularly the two words *δεκάσω* and *χρήματα*, are the same as those which he applies to the law of Cicero on bribery<sup>59</sup>, and to that passed by Pompey in his consulship of 52<sup>60</sup>, and to the Lex Iulia of Augustus on the same subject<sup>61</sup>. And there can be no doubt about this use of the words, but it could be argued equally well that Dio thought that all these laws had to do with sodalicia rather than with bribery, or he would not have chosen the technical terms, for *δεκάσω* is the term regularly used to translate *decurio*.

<sup>48</sup>Planc. 47: Itaque haesitantem te in hoc sodaliorum tribuarius crimine ad communem ambitus causam contulisti.

<sup>49</sup>Planc. 49: quae comitia primum habere coepit consul (i. e. Crassus) cum omnibus in rebus summa auctoritate, tum harum ipsarum legum ambitus auctor.

<sup>50</sup>Cael. 16: Quod haud scio an de ambitu et de criminibus istis sodalium ac sequestrium, quoniam huc incidi, similiter respondendum putem. Numquam enim tam Caelius amens fuisset, ut, si se isto infinito ambitu commaculasset, ambitus alterum accusaret. Compare 78.

<sup>51</sup>Mommsen, Coll. 42.

<sup>52</sup>39.37, cited in full above, in note 48.

<sup>53</sup>37.20: ἔδοξε τῇ βουλῇ . . . δέκα ἐτῶν φυγὴν τοῦ Κικέρωνος ἐς τὰ μάλιστα ἐνάγοντος τοῖς ἐπιτιμίοις τοῖς ἐπὶ τῷ δεκάσμῳ τεταγμένοις προσνοθεύησαι.

<sup>54</sup>50.52: καὶ ταῦτα μὲν ἄλλα τέ τινα κατὰ πάντων ὁμοίως τῶν δικαστηρίων ἐτάχθη. τοῖς δὲ δὴ τὰς ἀρχὰς δεκάσουσι καὶ τοὺς προσαλωκότας ἐπὶ τοιοῦτῃ τινὶ κατηγοροῦν ἐπέστησεν, ἀλλὰ σφίσιν οὐκ ἐλάχιστον προσέειπε.

<sup>55</sup>54.16: ὁ δ' οὖν Αὔγουστος ἄλλα τε ἐνομοθέτησε, καὶ τοὺς δεκάσαντας τινὰς ἐπὶ ταῖς ἀρχαῖς ἐς πέντε ἐτη αὐτῶν εἴρξε.

<sup>48</sup>Dio Cassius, 39.37: μικρότερα ἐπιτίμια τοῖς δεκάσουσι τινὰς ἐπέταξαν, ὥσπερ τοὶ αὐτοὶ ἔλαττον, οἱ δὲ χρήμασιν, ἀλλὰ βλῆ τὴν ἀρχὴν ἐλήφεσαν, ἀμαρτύντες.

<sup>49</sup>Cicero, Planc. 36, 49. Compare Schol. Bob., page 253.

<sup>50</sup>Especially Zumpt, Criminalrecht, II. 2.368-372, 386-391.

<sup>51</sup>So Wunder, Introduction to Plancius, p. 74; Mommsen, Coll. 46; Rein, 714.

<sup>52</sup>Plutarch, Cat. Min. 42; Pomp. 52.

<sup>53</sup>Planc. 37: Hoc igitur sensimus: "cuiuscumque tribus largitor esset, et per hanc consensionem, quae magis honeste quam vere sodalitas nominaretur, quam quisque tribum turpi largitione corrumpere, eum maxime eis hominibus, qui eius tribus essent, esse notum." Ita putavit senatus, cum reo tribus ederetur eae, quas in largitione devinctas haberet, eosdem fore testis et iudices.

But there is a passage in the Plancius speech in which Cicero draws a sharp contrast between the law of Crassus and laws relating to bribery<sup>62</sup>. In this he shows that Laterensis had in matters of procedure followed the terms of the law of Crassus, but in his argument of the case he had argued on the subject of bribery rather than on the subject of the sodalicia. Had he intended to convey the idea that the law of Crassus was a law on bribery, he would not have said that Laterensis argued along the lines set by laws on bribery, but along those set by older laws on bribery, which were now superseded. Looking at the question generally, we may say that it would be remarkable that Pompey should at this very time be concerned with the general subject of bribery, and with the constitution of juries, and, while considering new measures himself, unite with Crassus in framing a measure embracing only one phase of the same subjects.

It cannot be doubted that the clubs were frequently in existence for a longer period than that immediately concerned with one election. They probably endeavored to exert an influence on the course of legislation, and on other forms of political activity. To attain their objects they would resort to force, or even to rioting, if necessary, and consequently an enactment directed against their existence was as much directed against the use of violence as against a specific instance of bribery. This is made clear by the fact that the penalty for sodalicia had no relation to that for bribery, but whenever the penalty is mentioned it is said to be the same as that for vis. In fact there seems to be only one passage, in Dio Cassius<sup>63</sup>, where the penalty for sodalicia is compared with that for ambitus, but everywhere else it is put on a par with the penalty for rioting<sup>64</sup>. And the words of Paulus indicate very decidedly that one accused of sodalicia was actually tried for vis publica<sup>65</sup>. This, too, is a natural inference from Cicero's phrasing in his letter to his brother.

Another fact in connection with the case of Plancius is very strong evidence that the Romans did not regard sodalicia as a form of bribery. The presiding officer in the case was C. Alfius Flavius<sup>66</sup>, a praetor who was at the same time in charge of the court on treason<sup>67</sup>. This situation illustrates a phase of the Roman criminal procedure, that, when a new crime was defined, and a new procedure inaugurated, it sometimes became necessary to assign the work of the new law to a court

already existing. If sodalicia were but a part of the general legislation on ambitus, it would have been assigned immediately to the court on ambitus, but instead of that it was given to one decidedly different. The case of Plancius arose in August or early September of the year 54, and just at this time the court on ambitus was unoccupied. In fact only one case, that of M. Nonius Sufenas<sup>68</sup>, is known to have been tried in this court in that year, until toward the end of September, when Gabinius was tried, and in October, when three cases were heard in rapid succession. Therefore, there seems to have been no objection to putting the hearing of cases for sodalicia in the hands of the court on ambitus, had the Romans felt that it belonged to this court. In the same year C. Messius was tried for sodalicia before the praetor P. Servilius Isauricus, but nothing is known concerning his functions. At any rate it is of importance to notice that the two cases were not tried by the same man.

An examination of the various prosecutions for sodalicia leads to the conclusion that there were other grounds than ambitus on which charges could be based. In the year in which Plancius was prosecuted, 54 B. C., C. Messius was prosecuted for the same offense. He had been tribune in the year 57, and had been active in the movement to recall Cicero from banishment<sup>69</sup>. In the year 54, through the influence of the consul Appius Claudius, he was appointed legatus to Caesar in Gaul. But he was very soon recalled by an edict of the praetor P. Servilius Isauricus, before whom he was then prosecuted<sup>70</sup>. The jury was chosen in accordance with the specifications of the law of Crassus, and the defendant was acquitted through the pleadings of Cicero<sup>71</sup>. Sometime later he became aedile, but there is no means of knowing when he attained to this office<sup>72</sup>. There is no hint that the prosecution resulted in any way from his canvass in 58 for the tribuneship. In fact, it would be absurd to think that he would be prosecuted in 54 for having formed his organizations four years earlier. The Romans were not in the habit of prosecuting for offenses committed before there was legislation upon the subject; ex post facto legislation was almost unknown, except that there was occasional special legislation that was intended to be applied immediately to individuals<sup>73</sup>. If the prosecution was not connected with the election in 58, and if the law of Crassus was not intended to be retroactive, Messius must have been prosecuted for the formation of clubs after the enactment of the law in 55. Therefore, they must have been used, or have been intended to be used, for purposes other than that of bribery in connection

<sup>62</sup>Planc. 36: Sed aliquando veniamus ad causam. In qua tu nomine Legis Liciniae, quae est de sodaliciis, omnis ambitus leges complexus es; neque enim quicquam aliud in hac lege nisi editiciorum iudices es secutus.

<sup>63</sup>39.37, cited above, in note 48.

<sup>64</sup>Ulpian, Digest 47.22.2: Quisquis illicitum collegium usurpaverit, ea poena tenetur, qua tenentur, qui hominibus armatis loca publica vel templa occupasse iudicati sunt: Cicero, Ad Q. Fr. 2.3.6 (of the senatus consultum of 56, leading to the law of Crassus); eodem die senatus consultum factum est, ut sodalitates decurativae discederent lexque de eis ferretur, ut, qui non discessissent, ea poena, quae est de vi, teneretur.

<sup>65</sup>Paulus, Sent. v. 30 (ad Legem Iuliam ambitus): Petiturus magistratum vel provinciae sacerdotium si turbam suffragiorum causa conduxerit, convictus ut vis publicae reus, in insulam deportatur.

<sup>66</sup>Planc. 43. 104. <sup>67</sup>Cicero, Ad Q. Fr. 3.1.7, 3.3.3.

<sup>68</sup>Cicero, Att. 4.15.4.

<sup>69</sup>Cicero, Post. Red. in Sen. 21; Att. 4.1.7.

<sup>70</sup>Cicero, Att. 4.15.9: Messius defendebatur a nobis de legatione revocatus, nam eum Caesari legatari Appius.

<sup>71</sup>Cicero, Att. 8.11D.2. <sup>72</sup>Caesar, Bell. Afric. 33.

<sup>73</sup>Heitland on Pro C. Rabirio, page 24, note 50. Compare the retroactive clauses in the Lex Sempronia, and in the law of Pompey against Milo; also the enactment of Clodius against Cicero; Cicero, De Fin. 2.54; Cluent. 136-137. But such legislation was not so common as Heitland's statement implies.



with an election at which Messius was a candidate, or at which he could have been present in Rome.

The next prosecution mentioned under this law was that of Vatinius in the same year in which Messius and Plancius were prosecuted. Tacitus tells us that Cicero spoke for the defense, and that he delivered his speech in the afternoon<sup>74</sup>. The conclusion is natural that, as usual, he was the last speaker in the proceedings. Cicero himself, in mentioning the case, does not tell who the prosecutor was, nor does he give the grounds for the accusation<sup>75</sup>. But Quintilian mentions the case, and from his statement it seems clear that the prosecutor was C. Licinius Macer Calvus, whose speech was highly praised<sup>76</sup>. From other circumstances the history of the case becomes somewhat known. Vatinius was the opponent of Cato in the election to the praetorship in the year 56. The election was long delayed, and finally Vatinius was elected. But in order to defeat Cato and elect Vatinius, Pompey and Crassus, who did not want to have Cato in office while they were consuls, spent large amounts of money, and finally resorted to rioting to scatter the followers of Cato<sup>77</sup>. Since the election occurred so late, the newly elected consuls persuaded the Senate that it was advisable that the persons elected to the various offices should assume their duties without waiting, as the law required, to see whether they would be prosecuted for irregularities in the canvassing<sup>78</sup>. Consequently Vatinius was safe until the expiration of his year of office, at the end of 55. During the next year he was prosecuted under the law carried by his champion. In this peculiar situation it cannot be ascertained whether the charge of sodalicium arose out of the rioting or out of the bribery connected with his election, for he was undoubtedly guilty of both. The chances are that he was acquitted, for he and Cicero were friendly thereafter<sup>79</sup>.

Two years later, in 52 B. C., Milo was prosecuted for sodalicium by P. Fulvius Neratus after his conviction for the murder of Clodius<sup>80</sup>. He was condemned in his absence, and the prosecutor received the legal reward for conducting a successful prosecution. There seems to be little doubt that the case resulted from Milo's recent candidacy for the consulship, and in that case there is the interesting situation that he was prosecuted for both ambitus and sodalicium arising out of the same election. But the prosecution and conviction of M. Valerius Messalla in the next year, 51 B. C., was very much like it. In 54 he was elected to the consulship for 53, but he paid high for the honor<sup>81</sup>,

for he was secretly opposed by Pompey<sup>82</sup>, and it was expensive to win an election against the will of Pompey. Before he assumed office he was prosecuted by Q. Pompeius Rufus for bribery, but either the case was dropped, or Messalla was acquitted, with the assistance of Cicero, Hortensius and the aristocratic party<sup>83</sup>. Whatever happened, he was free to hold the consulship. But in 51 he was again prosecuted, this time on a charge of sodalicium, for which he was convicted<sup>84</sup>. There had been no election in which Messalla had participated, at least as a candidate, since his first trial, so that the second accusation must have arisen out of the election in 54, or have been connected with the formation of sodalicium at a time when there could be influence brought upon proposed legislation, or upon some aim that was not immediately connected with canvassing. If the prosecution resulted from the canvas of 54, he was in the same position as Milo, that is, he was prosecuted for both ambitus and sodalicium after one election. Certainly there must have been a fundamental difference between the two crimes, for it would have been impossible to prosecute twice for the same offense, and particularly in the case of Milo to secure a conviction twice<sup>85</sup>.

(To be concluded)

DARTMOUTH COLLEGE.

R. W. HUSBAND.

## REVIEWS

Latin for the First Year. By Walter B. Gunnison and Walter S. Harley. Boston: Silver, Burdett and Company (1915). Pp. vi + 329. \$1.00.

This book has the special aim of being simple, thorough, and interesting—a truly excellent program. As far as simplicity is concerned, the authors have succeeded admirably. This is apparent at once in the grammatical explanations which precede the exercises, and which, in addition to being well planned, are expressed with unusual clearness. One rarely finds this part of the work done in a more satisfactory manner.

To be commended also is the simple but thorough-going development of the forms. The arrangement is based mainly on the verb as the backbone of the sentence, and carries with it some implications as to the order of the syntax. The separate tenses after some preliminary preparation are learned for all the conjugations at the same time, which is an appreciable economy of effort. With similar good judgment the passive voice of each tense is given immediately after

<sup>74</sup>Dial. 21. <sup>75</sup>Ad Q. Fr. 2.16.3.

<sup>76</sup>Quintilian, 9.2.23; Seneca, Controv. 3.19; Meyer, *Oratorum Romanorum Fragmenta*, 474 ff.

<sup>77</sup>Plutarch, Cat. Min. 42; Pomp. 52.

<sup>78</sup>Cicero, Ad Q. Fr. 2.9; Plutarch, Cat. Min. 42.

<sup>79</sup>Cicero, Planc. 40, mentions a case of sodalicium in which he had been counsel shortly before the case of Plancius, and Schol. Bob. 262 says that this was the case of Vatinius. Cicero's defense of Vatinius is also mentioned by Asconius, p. 18.

<sup>80</sup>Asconius in Milon. 40, 54. Compare my article, The Prosecution of Milo, in *THE CLASSICAL WEEKLY* 8.148.

<sup>81</sup>Cicero, Att. 4.16.4: De Messalla quod quaeris, quid scribam nescio. Nunquam ego vidi tam parvis candidatos. Messallae copias nosti.

<sup>82</sup>Cicero, Att. 4.9.15.

<sup>83</sup>Cicero, Att. 4.16.8; Ad Q. Fr. 3.2.3; Fam. 8.2.4: Certe, inquam, absolutus est, et quidem omnibus ordinibus et singulis in uno quoque ordine sententia. "Ride modo", inquit. Non me hercules; nihil unquam enim tam praeter opinionem, tam quod videretur omnibus indignum, accidit.

<sup>84</sup>Cicero, Fam. 8.4.1: absolutum Messallam, deinde condemnatum. Compare Fam. 8.2.1.

<sup>85</sup>But Mommsen, who holds that sodalicium was but a special form of ambitus, sees no objection to his view in the fact that a man was twice prosecuted for the same offense (see Coll. 46). I expect to treat this problem soon in connection with the prosecution of Jesus by the Jewish and the Roman authorities.



the active. It will be noticed that the demonstrative pronouns do not appear until the second half of the book. I must say that this seems to me to be a mistake. The pronouns would seem to be more easily learned in close connection with adjectives of the first and second declensions, with which they have so many forms in common. Think moreover of studying a modern language and of not being permitted to know the words for *this* and *that* until the forty-fourth lesson!

Likewise in the arrangement of the syntax there is an obvious postponement of difficulties. Indirect discourse is first used in lesson forty-third, indirect question in lesson sixty-second, and *cum*-temporal in lesson seventy-sixth. This is the usual method, but it should not be carried too far. It seems a pity that so important a construction as the indirect question should not be taken up much earlier in the course. In the present case such a change would involve the earlier introduction of the subjunctive, and would disarrange the plan of the book. Aside from this the syntax is developed in a skillful manner with recognition of the fact that certain constructions are appropriate with certain forms, e.g. the accusative of extent with cardinal numbers, and the ablative of the agent with the passive voice.

Thoroughness implies among other things systematic repetition of forms and constructions. I notice, however, that the future perfect tense, though given in the thirty-ninth lesson, occurs apparently only once in the remainder of the book. The dative of the possessor is repeated once, the indirect question twice in the English sentences, and the final *ut*-clause nine times. The two latter constructions occur more frequently in the Latin exercises, but there is clearly a tendency to lose sight of both forms and constructions after they have been once taken up and explained. This is doubtless not oversight so much as a desire to make the exercises easy and to lessen them in quantity. It is certainly true that the work of the first year should be easy, but it is also true that it should be sufficient in amount to insure a fair degree of mastery in the things with which it deals. In the first respect, as we have seen, the present book is not lacking; in the second, I should say that it is lacking, and that this constitutes its capital defect as well as that of some other books of a similar character. The result is seen when the pupil passes from these delightfully easy sentences to the reading of real Latin such as that of Caesar. It is safe to say that in most cases he is not well prepared and must undergo a period of slow and painful struggle in which his interest in the subject is more than likely to be deadened. Out of this discouraging phase of Latin teaching has come the movement to give more time to the elementary stages. Let the work for the beginner be easy by all means, but let it be varied in character and plentiful in amount.

And also, if possible, let it be interesting. In their efforts toward this end the authors make use of a number of illustrations including some half dozen

reproductions of modern paintings. Two of these, Alma Tadema's Roman Emperor on the Way to the Bath, and Forte's Street Scene in Rome, seem to me to give erroneous impressions of Roman life. One is also curious to know what led to the choice of the bust of Caesar on page 105. On the whole the illustrations are well chosen, but a detailed index (on the model of that in Havell's Republican Rome) would add to their value. An index is also needed for the Latin quotations, which are mostly given without indication of their source. They are scattered throughout the book and are mainly brief *sententiae* easy to learn and useful to remember. It would be well in a second edition to pay more attention to some of the English renderings. It is hardly fair to Horace to outfit his famous (and much misunderstood) *Integer Vitae* with William Coult's translation. At best these external features stimulate the interest of the pupil, but do not necessarily engage it permanently.

STANFORD UNIVERSITY.

JEFFERSON ELMORE.

Hamlet and Orestes. A Study in Traditional Types.

By Gilbert Murray. New York: Oxford University Press, American Branch (1914). Pp. 27. 25 cents.

This paper was originally the annual Shakespeare lecture of the British Academy in 1914. There can not have been many lectures on literary subjects delivered before the British Academy, or any other audience, which were more interesting and stimulating than this one. The lecturer begins by calling attention to the fact that Hamlet was a traditional character among the Scandinavian peoples, just as Orestes was among the Greeks. The prominence of Orestes in Greek mythology and literature is familiar to us all: not so well known, however, is the fact that there was a Hamlet-tragedy in England before Shakespeare, and that still earlier the same hero, called sometimes Amlethus and sometimes Amleth, appears in the prose Edda, composed about 980, in the Gesta Danorum of Saxo Grammaticus, written about 1185, and in the Icelandic Ambales Saga. Comparing these Greek and these Northern legends, Professor Murray finds certain unique and significant features common to the two groups:

(1) In all versions the hero's father has been killed by a kinsman, who has then married the queen and seized the throne; whereupon the hero, driven by supernatural commands, undertakes and carries through the duty of vengeance.

(2) In all versions, there is some "shyness about the mother-murder".

(3) "In all versions the hero is under the shadow of madness".

(4) In other respects both Orestes and Hamlet have strange personalities, especially strange for great tragic figures. Shakespeare's Hamlet is described as "the fool transfigured". In particular, both heroes present at times a disorderly, even repulsive appear-

ance. Both heroes also have a morbid attitude towards women: in the Northern legends this appears in the hero's gross and abusive language to women and about them, in the Greek it appears for example in Euripides's *Orestes* 1590: 'I could never weary of killing evil women'.

(5) Of less importance, perhaps, are the coincidences that (a) both heroes have been away from home when the main drama begins, (b) both are in danger from persons who seek their life, (c) both are "a good deal connected with the dead".

(6) Lastly, there are many points of resemblance between the persons connected with each of these heroes:

(a) The fathers are similar in many respects.

(b) In certain striking personal characteristics the mothers of the two heroes are similar, and, at least in Saxo, the same characteristics appear in Amlodi's wife.

(c) Each hero has a faithful friend and confidant.

(d) In each group of legends there are a young woman and a very old man, whose characteristics and whose relation to each other are in some respects peculiar.

Now such similarities and coincidences call for an explanation. Professor Murray is of the opinion that there was no direct connection between either the sagas or the dramas of Greece and of the North; and in this opinion doubtless most people will concur. He believes that the common element in the stories of *Orestes* and *Hamlet* is

the world-wide ritual story of what we may call the Golden-Bough Kings. . . . That ritual story lies at the root of the traditional Mummings Play which, though deeply degraded and vulgarized, is not quite dead yet in the countries of Northern Europe.

There is really a very obvious similarity between Gaia, Rhea, Jocasta and Clytemnestra in the Greek legends on the one hand, and Amba, Gerutha and Gertrude in the Northern legends on the other. The same similarity exists between the Old Kings in the various stories, and between the various Young Avengers. The origin of these similarities is undoubtedly the primitive, quasi-religious conception, common at least to most Indo-European peoples, that Winter slays the Summer, or the New Year slays the Old Year, and is in turn slain by his Successor. If proof is needed, the lecturer finds it in Saxo's account, in which *Hamlet* is the son of *Horvendillus* or *Orvandil*, an ancient Teutonic god connected with Dawn and Spring. The wife of this god is *Groa*, who is said to be the Green Earth. This god slew his enemy *Collerus*—*Kollr* the Hooded or perhaps the Cold—in what Saxo calls 'a sweet spring-green spot' in a budding wood. He was slain by his brother and avenged by his son (page 23).

All this seems to imply, in Professor Murray's own words,

a great unconscious solidarity and continuity, lasting from age to age, among all the children of the Poets,

both the Makers and the Callers-forth, both the artists and the audiences. In artistic creation, as in all the rest of life, the traditional element is far larger, the purely inventive element far smaller, than the unsophisticated man supposes.

If classical scholars should study the ancient literature in the spirit which Professor Murray's lecture displays, and not in the spirit of the Renaissance, if they should seek to interpret and present the ancient literature as any modern literature is interpreted and presented, instead of treating Greek and Latin books merely as material for translation, then I believe there would be less complaint that the Classics have small value or interest for the modern world.

PRINCETON UNIVERSITY.

WILLIAM K. PRENTICE.

#### NOTE ON VERGIL, AENEID 3.513-514.

While reading the *Aeneid* lately, I was struck by the lines 3.513-514:

haud segnis strato surgit Palinurus et omnis  
explorat ventos atque auribus aera captat.

For *Palinurus* determines the direction of the wind in a way which had been described to me by Professor E. D. Perry as in use to-day among seafaring men. If you hold your head so that the wind comes straight into one ear, and then turn slowly till it is blowing with equal force in both ears, you will find yourself then facing it directly. This custom appears to have been unknown to the editors of Vergil, who have understood the passage as *Conington* did when he wrote, "'Tries to catch the air with his ears' is only a poetical way of saying 'listens for a gale'", although a breeze can be felt long before it is strong enough to be heard. *Servius* seems to have thought that it was the direction, not merely the existence, of a breeze with which *Palinurus* was concerned; for he says, in his note on 514, *naturale enim est, ut a qua parte flaturus est ventus, ad eam auris admota frigidior fiat*.

*Leo* has discussed the point in *Hermes* 42, 44 f. An experienced sailor told him that it was so natural for him to catch the wind in his ears that he thought of this, as a matter of course, when he read *Aen.* 3.514, a line which would never have struck him as being in any way unusual. In sailing, he said, you were practically forced to use this means whenever the breeze was not very strong, and it was also too dark to tell by the look of the water. After having this confirmed by another seafaring man, *Leo* reports it, to prove "dass Vergils Ausdruck weder unsachgemäss noch künstlich, sondern ein so treffender wie gewählter Ausdruck ist".

NEW YORK CITY.

PEARL WILSON.

On June 16 last the *Menaechmi* of *Plautus* was presented in Latin, at Hamilton College, Clinton, New York, under the auspices of the Latin Club of the College, and under the direction of Professor C. K. Chase. The incidental music used to accompany the *Cantica* was an arrangement scored for flute and two clarionettes from the music composed by the late Professor *Frederic DeForest Allen* for the *Phormio* of *Terence*. Year by year Latin plays are given in the original at Hamilton College, under Professor Chase's direction. See *THE CLASSICAL WEEKLY* 7.10-12.

At Smith College, Northampton, on Saturday evening, May 13, the *Iphigenia in Tauris* of *Euripides* was presented in Greek by students of the College, under the direction of Professor *Julia H. Caverno*. I had the pleasure of seeing the performance, and can testify to its excellence.

C. K.

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